

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **CIVIL DIVISION**

3 **CAUSE NO. 59 of 2013**

4  
5  
6 **BETWEEN:**

7 **WILLIAM HELFRECHT**

8 **Plaintiff**

9 **AND**

10 **JAMES CHAPMAN**

11 **1<sup>st</sup> Defendant**

12 **AND**

13 **BODDEN LITIGATION LTD.**

14 **2<sup>nd</sup> Defendant**

15 **AND**

16 **TOUCH AND TETUE LTD.**

17 **3<sup>rd</sup> Defendant**

18  
19  
20 **Appearances:**

Ms. Krista-Lynn Wight and Mr Aristos Galatopoulos of  
Maples and Calder for the Plaintiff

21  
22  
23 Mr. Alan Turner of Turners for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup>  
24 Defendants

25  
26 **Before:**

Hon. Justice Richard Williams

27  
28 **Heard:**

14<sup>th</sup> March 2014

29  
30 **Date of Judgment:**

14<sup>th</sup> March 2014

31  
32 **HEADNOTE**

33 *Practice – Case management hearing- Application for an unless order due to failure to*  
34 *comply with court orders in relation to discovery – When the Grand Court should*  
35 *exercise discretion to make an unless order – GCR O.24 r.20(1) - Application for costs*  
36 *on indemnity basis*





himself and of James Chapman, the First Defendant. A slightly Amended Writ and Statement of Claim were filed on 31<sup>st</sup> July 2013.

3  
4 4. The Defence and Counterclaim was filed on behalf of all three defendants on 19<sup>th</sup>  
5 July 2013. The Defendants' case is that at no time was the Plaintiff an equity  
6 partner in Bodden & Bodden Litigation, the contention being that he was merely  
7 an employee. The First Defendant counterclaims, in the alternative, for damages  
8 primarily for breach of duty which he claims were owed to him by the Plaintiff.

9  
10 5. The Plaintiff filed the Reply to Defence and the Counterclaim on 31<sup>st</sup> July 2013.  
11 Therefore, pursuant to GCR O.24, r.1(1), automatic exchange of lists of discovery  
12 documents was due on 28<sup>th</sup> August 2013. The Plaintiff in a letter dated 23<sup>rd</sup>  
13 August 2013 set out his position on the relevant categories of documents he  
14 expected to receive and the discovery sought. It does not appear that there has  
15 been a substantive response to that letter in relation to the scope of discovery.

16  
17 6. By way of a very brief overview of the issues from the pleadings (and not by way  
18 of any settled finding of fact) the background is as follows. The Plaintiff claims  
19 that in September 2006 he and the First Defendant became partners in Bodden &  
20 Bodden Litigation, which he says was set up at the same time. The Plaintiff  
21 claims that the partnership remains and that there are various binding  
22 arrangements. The Defendants assert that Bodden & Bodden Litigation was

1           formed by the First Defendant in or about July 2006. It is further asserted that Mr.  
2           Chapman was and remains the sole equity partner of Bodden & Bodden litigation.

3

4    7.       The skeleton argument prepared on behalf of the Plaintiff helpfully summarises  
5           the procedural events. For convenience sake in this ex tempore ruling I will read  
6           from uncontentious parts of the skeleton argument.

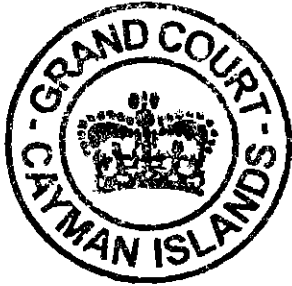
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8    8.       The parties agreed an extension for the exchange of lists to 30<sup>th</sup> September 2013. I  
9           note that that was approximately 5½ months ago. At a hearing on 31<sup>st</sup> October  
10          2013 of the Plaintiff's Summons for Directions dated 11<sup>th</sup> September 2013, Quin  
11          J. was informed of the Defendants' failure to meet the agreed deadline for  
12          exchange of lists. Quin J. made an order, importantly by consent, granting a  
13          further extension of time for the exchange to 29<sup>th</sup> November 2013. Apparently  
14          this date was one suggested and agreed by the Defendants.

15

16   9.       On 27<sup>th</sup> November 2013, two days prior to the afore-mentioned deadline set by  
17          Quin J. in a Court Order for the exchange to take place, the Defendants indicated  
18          that they were not in a position to exchange "*...but fully expected to be in a*  
19          *position to do so on Friday, 6 December 2013.*" The Plaintiff agreed to this  
20          further extension.

21



1 10. However, in the late afternoon on 6<sup>th</sup> December 2013 the Defendants informed the  
2 Plaintiff that a complete review of the documents could not be completed:

3 *“...although the majority of documents have been reviewed...”*  
4

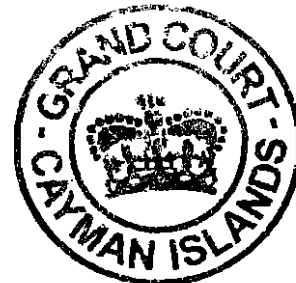
5 A further request was made by the Defendants, again acceded to by the Plaintiff,  
6 this time to extend time for the provision of a preliminary list on 9<sup>th</sup> December  
7 2013, with a supplemental list being provided on 16<sup>th</sup> December 2013. The  
8 Plaintiff contends that at the time he still reserved his rights to later assert that the  
9 Defendants were in breach of paragraph 4 of Quin J.’s order of 31<sup>st</sup> October 2013.

10  
11 11. Although the Defendants were able to provide a preliminary list as promised on  
12 9<sup>th</sup> December 2013, they failed to provide a supplemental list by or on 16<sup>th</sup>  
13 December 2013. As a consequence, the Plaintiff filed a Summons dated 18<sup>th</sup>  
14 December 2013 in which he sought an order that:

15 *“Unless the Defendants served their complete list of discovery*  
16 *documents forthwith and the Defendants produce all of their*  
17 *discovery documents for inspection within seven days of service of*  
18 *their lists, the Defendant’s Defence and Counterclaim be struck*  
19 *out and judgment be entered for the Plaintiff.”*  
20

21 The Summons also sought an order that the Defendants forthwith pay the  
22 Plaintiff’s costs of the application on the indemnity basis.

23



1 12. I have been informed this morning that in relation to part one of Schedule 1 of the  
2 Initial List of Documents that the first 18 items have been disclosed. I am told that  
3 in relation to the email correspondence referred to in paragraphs 19 to 24 the  
4 Defendants are in a position to disclose emails up to the end of 2010, but further  
5 time is required to analyse them and produce emails up to and including 2012 .

6

7 13. The Defendants responded with their Summons dated 19<sup>th</sup> December 2013  
8 requesting an order that:

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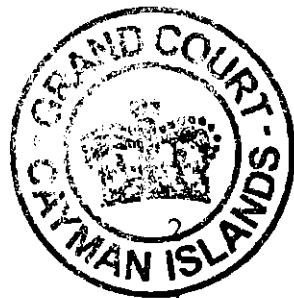
*"The First Defendant be granted an appropriate extension of time  
10 to complete a supplemental list of documents to provide all  
11 relevant documents forming part of items 19-24 of his initial list of  
12 documents dated 9th December 2013."*



14 An affidavit in support of the Summons sworn on 18<sup>th</sup> December 2013 by Laura  
15 Clemens, an attorney at the law firm of Bodden & Bodden, Attorneys at Law was  
16 filed on 19<sup>th</sup> December 2013.

17

18 14. In this first affidavit Ms. Clemens indicated that she has been tasked with  
19 reviewing the files and email correspondence maintained by the firm to assist in  
20 the discovery process, as the First Defendant was out of the jurisdiction dealing  
21 with personal and family matters. Ms. Clemens therein expressed her view that all  
22 of the books and records of Bodden & Bodden litigation were not discoverable.



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She stated that, having regard to the nature of the firm's business as a law firm, a careful review was necessary of all items maintained by Bodden & Bodden Litigation to determine which documents were relevant to this matter, and then, for any document that was potentially relevant and/or discoverable to ensure that disclosing it would not be releasing client information, and if the need arose, to redact any such client information if possible. Ms. Clemens indicated that it would not be possible for the work to be undertaken to enable discovery to take place by the due date and she requested an extension to at least 31<sup>st</sup> March 2014 to provide an adequate list of documents. At the end of the affidavit Ms. Clemens indicated that monthly updates would be provided. Regrettably, save for discussions between her and the attorney for the Defendants, this appears not to have occurred. Monthly communications to a Plaintiff may in certain cases reduce the concern that a Plaintiff might otherwise have and could prevent the type of situation we now find ourselves in.

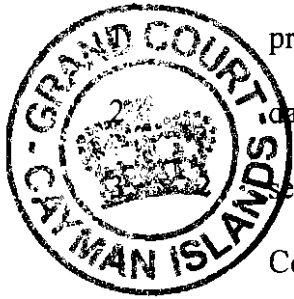
15. I am delighted to hear today Ms. Clemens' good news today. I accept that this may naturally affect the number of hours that are appropriate for her to work. Fortunately for the Courts, Ms. Clemens frequently appears before this Court and I have always found her to be an attorney that fully prepares her cases and assists the Court. Anything I say at this hearing is not intended to be a criticism of Ms. Clemens, but of the system to ensure compliance that has hitherto been put in place by the Defendants, a system which has evidently overburdened Ms.



4 Clemens, who may well have strived to work diligently, especially as there is no  
5 evidence of her having any substantial support. The Defendants are the ones who  
6 bear the responsibility for putting in place an adequate mechanism to ensure  
7 discovery and importantly compliance with court orders. It is apparent that over  
8 many months insufficient resources have not been made available towards this  
9 task. When I say this, I have regard to the Note of Henderson J.'s judgment in **R.**  
10 **Ebanks, Powery, A. Ebanks and Bodden v Brooks** [2004-05 CILR Note 28]  
11 which records:

12 *"Ordinarily a defaulting party will not be excused if the fault was*  
13 *not his personally but that of his legal representative, since-*  
14 *(1) the client, rather than the other party to the litigation, should*  
15 *suffer for the failure of the legal representatives;*  
16 *(2) the client may have a remedy in damages or in respect of*  
17 *wasted costs;*  
18 *(3) it would be almost impossible for the court to apportion blame*  
19 *between a client, his attorney and his counsel; and*  
20 *(4) the court is entitled to expect that its officers and counsel who*  
21 *appear before it are more observant of the duty owed to the*  
22 *court than the party himself (Hytec Systems Ltd v Coventry*  
23 *City Council, [1997] 1 W.L.R 1666, applied)"*

24 16. On 13<sup>th</sup> January 2014 the parties again appeared before Quin J. It appears that  
25 Quin J. adjourned the hearing of the Plaintiff's application for an unless order on  
the basis that the parties would agree further timetabling and due to the fact that  
he felt he should recuse himself from hearing the application due to his



professional familiarity with the parties. The parties submitted a Consent Order dated 23<sup>rd</sup> January 2014 in which the parties agreed that the Defendants would serve their complete list by 28<sup>th</sup> February 2014. Quin J. signed and approved the Consent Order, thereby ensuring that it was the Court case managing this case,

5 and as a consequence the Court is entitled to expect that Quin J.'s Order would be  
6 fully complied with.

7

8 17. On the 14<sup>th</sup> and 21<sup>st</sup> February 2014 the attorneys for the Plaintiff wrote to the  
9 Defendants' attorney seeking confirmation that there would be compliance with  
10 the consent order. Regrettably, it appears that those letters went unanswered and  
11 that the agreed date of 28<sup>th</sup> February 2014 arrived and went with yet further non-  
12 compliance with an order of the Grand Court. The Defendants indicated to the  
13 Plaintiff that:

14 *"A folder of further documents will be available for*  
15 *delivery...before close of business on Monday."*

16

17 The Defendants requested a further extension until 3 March 2014. Yet again, the  
18 Plaintiff agreed to the extension.

19

20 18. The Defendants failed to comply by 3<sup>rd</sup> March 2014, a date which they had  
21 requested. As a consequence, on 4<sup>th</sup> March 2014 the Plaintiff's attorney wrote to  
22 the Listing Office, copied into the Defendants' attorneys, giving notice of the  
23 intention to apply for an unless order today.



1 19. Yesterday an affidavit sworn on that very same day by Ms. Clemens was filed at  
2 Court. It is not clear from her affidavit evidence whether Ms. Clemens was  
3 consulted before any of the agreements for extensions were made following the  
4 non-compliance with the order of Quin J. If she had been, then her current  
5 request for an extension to mid-May 2014 seems questionable when one considers  
6 that the Defendants had already given indications that they would be in a position  
7 to comply by dates which have already come and gone.

8  
9 20. In this, the second affidavit, Ms. Clemens reiterates the time-consuming and, in  
10 her words, "*complex*" nature of providing the discovery especially resulting from  
11 privilege issues concerning the firm's clients. She said it was difficult to estimate  
12 the amount of time needed to complete the full discovery, and requested that the  
13 Court should take into account the work that she has for other clients. Ms.  
14 Clemens indicates that she had volunteered to assist in the discovery work  
15 because of the First Defendant's health. I understand that his mother passed away  
16 in November 2013 and, although no details have been provided to me, that he has  
17 been very unwell for quite some time. It may well be that Ms. Clemens has a great  
18 deal of other work to do, and I am sympathetic to her predicament, but that in  
19 itself is not a reason for non-compliance with Court orders. We are now fast  
20 approaching the seven-month after the date for automatic discovery or at least 5½  
21 months after the date that the parties initially agreed for that to take place  
22

1 21. The Plaintiff rightly stresses to the Court that he has given great leeway to the  
2 Defendants by agreeing to every extension of time requested by them based on  
their assurances that they “*fully expected*” to comply with deadlines and that the  
“*majority of the documents (had) been reviewed.*” It does appear that the  
impression was continually being given by the Defendants, Ms. Clemens’  
affidavits apart, that discovery was very close at hand.

7

8 22. I find that the Defendants have breached, on more than one occasion, orders made  
9 by Quin J. and further that they have also failed to adhere to deadlines agreed  
10 between the parties which actually extended the time permitted by Quin J. They  
11 have not taken a proactive role in seeking the Court’s approval for any extension  
12 of time, save for one application for an extension for limited discovery made to  
13 the Court. They have also not been proactive by providing timely communications  
14 to the Plaintiff to give him informed updates as to the difficulties they were  
15 having in complying. There appears to be an inconsistency between the  
16 assurances for compliance given by the Defendants’ attorney when seeking  
17 extensions in correspondence and the content of the affidavit evidence of Ms.  
18 Clemens.

19

20 **Comments Concerning the Requirement to Comply with Court Orders**

21 23. Before I go on to deal with the law in relation to unless orders, I would like to  
22 make some general observations. Although the recently gazetted *Practice*



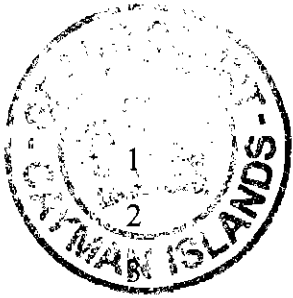
Circular No. 1/2014 has been issued by the Chief Justice in relation to compliance with court orders in a different division, namely the Family Division, the sentiment expressed therein may often be equally applicable to the Civil Division. A copy of the Circular was provided to the parties by the Court this morning before their submissions. In any event, Counsel for the Plaintiff at the time informed the Court that they had intended to bring it to the Court's attention during the hearing this morning.

24. In my view, the sentiments expressed in paragraph 1 of the Practice Circular may equally apply to this Division. If one replaces the words 'Family Division' with 'Civil Division' it could then read:

*"Orders made by the Civil Division of the Grand Court are not preferences, requests or mere indications; they are orders. Practitioners and those who appear before the Grand Court are reminded that orders, including interlocutory orders must be complied with to the letter and on time."*

25. At paragraph 2 of the Practice Circular, reference is made to the following statement of Sir James Munby, the President of the Family Division in England and Wales in **Re W (A Child), Re H (Children)** [2013] EWCA Civ 1177 at paras. 52 & 53:

*"The court is entitled to expect – and from now on family courts will demand – strict compliance with all such orders. Non-*



compliance with an order should be expected to have and will usually have a consequence.”

4 Here I break from the President’s statement and introduce the word ‘Civil Courts’  
5 instead of ‘Family Courts’. The President continued:

6 *“Let me spell it out. An order that something is to be done by 4 PM*  
7 *on Friday, is an order to do that thing by 4 PM on Friday, not by*  
8 *4:21 PM on Friday let alone by 3:01 PM the following Monday for*  
9 *some time later the following week. A person who finds himself*  
10 *unable to comply timeously with his obligations under an order*  
11 *should apply for an extension of time before the time for*  
12 *compliance has expired. It is simply not acceptable to put forward*  
13 *as an explanation for non-compliance with an order the burden of*  
14 *other work. If the time allowed for compliance with an order turns*  
15 *out to be inadequate the remedy is either to apply to the court for*  
16 *an extension of time or to pass the task to someone else who has*  
17 *the available the time in which to do it.”*

18

19 26. Paragraph 3 of the Practice Circular reiterates Sir James Munby’s following views  
20 expressed at page 6 of his 7<sup>th</sup> *View from the Presidents Chambers, January*  
21 **2014:**

22 *“What...is for me a real concern is something symptomatic of a*  
23 *deeply rooted culture in the family courts which, however long*  
24 *established, will no longer be tolerated. I refer to the slapdash,*  
25 *lackadaisical and on occasions almost contumelious attitude which*  
26 *still far too frequently characterises the response to orders made*  
27 *by family courts. There is simply no excuse for this. Orders,*



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5 including interlocutory orders, must be obeyed and complied with  
6 to the letter and on time. Too often they are not. They are not  
7 preferences, requests or mere indications; they are orders. This  
8 principle applies as much to orders by way of interlocutory case  
9 management directions as to any other species of order. The court  
10 is entitled to expect – and from now on family courts will demand –  
11 strict compliance with all such orders. Both parties and none  
12 parties to whom orders are addressed must take heed...Non-  
13 compliance with order should be expected to have and will usually  
14 have a consequence.”

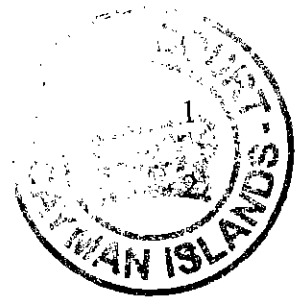
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19 27. Paragraph 6 of the Practice Circular informs that:

20 “...persons who appear before the Grand Court are expected to  
21 comply with their plain and unqualified obligation to comply with  
22 the terms of a court order made against or in respect of them,  
23 unless or until it is discharged. This obligation applies to all forms  
24 of orders including interlocutory case management directions.”

25  
26 28. Paragraph 7 of the Practice Circular provides:

27 “If parties are unable to comply with the terms of an order, they  
28 are not entitled to agree a variation of the order without obtaining  
29 the court’s approval, and therefore must make the appropriate  
30 application to the Grand Court for the time for compliance has  
31 expired.”

32 29. As I have already clearly acknowledged, this Practice Circular relates to  
33 procedures in a different Division of the Grand Court. I am acutely conscious that



1 differences exist in procedure between the two Divisions. However, I am of the  
2 view that the sentiments expressed in the Circular are ones which attorneys who  
3 appear before the Civil Division should also take heed of. In a number of cases,  
4 this being one of them, the concerns expressed about the state of affairs in the  
5 Family Division in England and Wales and in the Cayman Islands are equally  
6 applicable to proceedings in the Civil Division of the Grand Court.

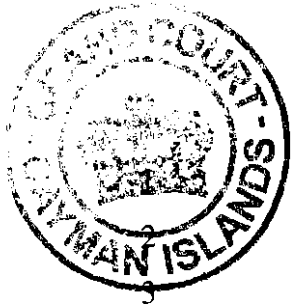
7  
8 **The Law- Jurisdiction of Court to Make Unless Orders**

9 30. GCR Order 24 r.20 (1) provides that:

10 *“Where the court has made an order for discovery (either of*  
11 *documents or by way of oral examination) against any party and*  
12 *such party fails to comply, the court can make such order as it*  
13 *thinks just, including, in particular, an order that the action be*  
14 *dismissed or, as the case may be that the defendants be struck out*  
15 *and final judgment entered.”*

16  
17 31. The overriding objective to GCR places a responsibility on the Court to regulate  
18 proceedings and to deal with every cause or matter in *“a just, expeditious and*  
19 *economic all way.”*

20  
21 32. Henderson J. in *Robert Ebanks and others v Esua Brooks* [2004-05] CILR 175,  
22 when considering the application of the defaulting party to set aside a stay  
23 imposed following non-compliance with an unless order, rightly helpfully stated  
24 that:



*"An unless order is granted on the basis that the respondent has failed to do what he is required to do in a timely manner."*

4 Note 28 in the Reports indicates Henderson J.'s view being that:

5 *"(1) an unless order is an order of last resort, made only if there is*  
6 *a history of failure to comply with previous orders".*

7  
8 In the matter before me, there have been failures to comply with previous orders  
9 as well as with agreements made between the parties extending the time provided  
10 for in the orders.

11  
12 The reported Note goes on to provide that:

13 *"(2) it is the party's last chance to put his case in order and failure*  
14 *to do so would ordinarily result in the sanction being imposed:*  
15 *(3) the sanction is a weapon which the administration of justice*  
16 *requires to be deployed unless the most compelling reasons is*  
17 *advanced excuse his failure."*

18  
19 **Conclusions**

20 33. In reaching my decision I have taken on board the representations made by Ms.  
21 Clemens in her two affidavits concerning the complexity and the time-consuming  
22 nature of the work required for full discovery. I have taken on board also her and  
23 the First Defendant's personal circumstances. However, even having regard to  
24 those matters, I am satisfied that the Defendants have failed to do what they have



3 been reasonably required to do in a reasonable time. The Defendants have failed  
4 to comply with a number of court orders. The Defendants have failed to adhere to  
5 agreed extended dates for discovery. The Defendants have, save one occasion,  
6 failed to make appropriate and timely (by that I mean in good time prior to the  
7 ordered/due date for compliance) applications to the Court for an extension.  
8 Although I have regard to Ms. Clemens' and the First Defendant's (who I note is  
9 an experienced attorney one can expect to be well aware of the procedures in the  
10 Grand Court and of requirements in relation to court orders in this jurisdiction)  
11 personal circumstances, that does not prevent the need for him or his attorneys to  
12 have put in place in good time additional adequate mechanisms to ensure that  
13 there was compliance with court orders. As I have already remarked, compliance  
14 is not discretionary, it is mandatory.

15 34. I am not satisfied, due to the number of past failed assurances given by the  
16 Defendant, that there will be compliance with court orders without the protection  
17 of an unless order. I am not satisfied that a sufficient system would be put in place  
18 to ensure compliance without the protection of an unless order. I have already  
19 remarked that if Ms. Clemens' understandably busy practice and circumstances  
20 prevents and has in the past prevented her from carrying out the discovery  
21 exercise by a date set in orders (or by the extension dates agreed by the parties)  
22 then that in itself is not a reason for failing to do what is required in a timely  
manner.

1 35. In all of this it has to be remembered that, for a Defendant, litigation is not a  
voluntary process. In order to bring a dispute to a just and speedy resolution  
courts will use their powers to ensure that non-compliant parties abide by the  
rules, and by timetable set for compliance with directions and orders. It is not  
acceptable for a Defendant to seek to avoid this process by relying upon workload  
as an excuse for non-compliance with the Court order.

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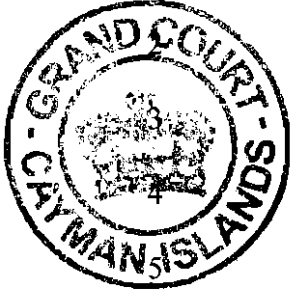
8 36. In the circumstances of this case, I find it proper to make an unless order to ensure  
9 compliance with the obligation to give discovery. I wish to make it clear that this  
10 is not a punishment for previous non-compliance. It is an order that has now  
11 become necessary, due to the past and ongoing failure of the Defendants, to  
12 ensure the effectiveness of court orders, and proper case management of this case.

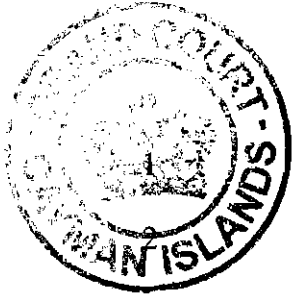
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14 37. However, I will give longer than the additional five-day period sought by the  
15 Plaintiff in the letter to the Listing Officer. I will allow some additional time,  
16 namely to 11<sup>th</sup> April 2014. I am of the view that in all the circumstances, that it is  
17 realistic and as such the Court is entitled to expect full compliance by that date  
18 and to expect the Defendants to now put in place the necessary resources and  
19 system to ensure that there is due compliance.

20

21 38. Accordingly, I order that unless the Defendants serve their complete list of  
22 discovery documents and produce all of their discovery documents for inspection





by 4 PM on 11<sup>th</sup> April 2014 the Defendant's Amended Defence and Counterclaim be struck out and judgment will be entered for the Plaintiff.

3

4 **Costs**

5 *(Submissions on costs made by Plaintiff – Court indicates that does not thereafter*  
6 *need to hear from Defendants).*

7

8 39. I now go on to consider the Plaintiff's application for a costs order to be made on  
9 an indemnity basis. I am satisfied that the Defendants, who have been successful  
10 in their application, must pay the costs of the Plaintiff's application. I have to  
11 decide whether it should be on the standard basis or indemnity basis.

12

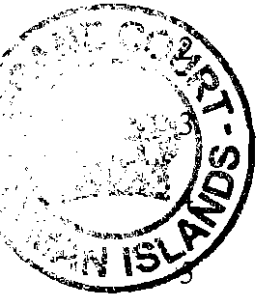
13 40. O.62 r.4(11) provides that the Court may make an inter partes order for costs to be  
14 taxed on the indemnity basis only if it is satisfied that the paying party has  
15 conducted the proceedings, or that part of the proceedings to which the order  
16 relates, improperly, and unreasonably or negligently.

17

18 41. Page 114 of **Cook on Costs (Third Edition)** expresses the principle as follows:

19 *“Costs out of a fund and cost inter partes are to be on the standard*  
20 *basis except where it appears to the court to be appropriate to*  
21 *order costs to be taxed on the indemnity basis.”*

22



1 42. I am aware that it has long been established that in practice costs on the indemnity  
2 basis should only be awarded in exceptional cases (e.g. **Billson v Residential**  
3 **Apartments Ltd** [1992] 1 AC 494). Examples when the awarding of costs on an  
4 indemnity basis may be appropriate are when the paying party's conduct is  
5 considered to have been wholly unmeritorious, or oppressive or in contempt of  
6 court. Of course this list is not exhaustive.

7

8 43. This general approach to the making of indemnity costs orders in England and  
9 Wales has been followed by the Courts in the Cayman Islands and by Henderson  
10 J. in the case of **Bennett v The Attorney General** [2010] 1 CILR 478.

11

12 44. In **Kiam v MGN Ltd** [2002] 1 WLR 2810, a case referred to by Henderson J. at  
13 paragraph 8 of his judgment wherein the Court of Appeal stressed:

14 *"To my mind, however, such conduct would need to be*  
15 *unreasonable to a high degree; unreasonable in this context*  
16 *certainly does not mean merely wrong or misguided in hindsight."*

17

18 45. Having regard to the background in this matter, I have had to consider the  
19 Plaintiff's application for indemnity costs vary carefully. Due to the number of  
20 breaches of court orders coupled with the failure to adhere to agreed dates for  
21 discovery, I view this as a borderline case for making such an exceptional order.  
22 However, when considering the issue of costs I do have regard to the content of  
23 Ms. Clemens' affidavit concerning the nature of her task, as well as the personal

1 difficulties being experienced by the Defendant. Although these are factors which  
2 do not excuse the non-compliance with court orders they are factors I have  
3 considered. On this occasion, I am satisfied that the order should be for the  
4 Defendants to pay the Plaintiff's costs of this application and that those costs are  
5 to be paid on the standard basis. However, those who do not comply with court  
6 orders for discovery should, especially in matters where the discovery may not be  
7 as detailed as evidently required in this matter, carefully heed the warnings given  
8 by me during this hearing and note the concerns outlined in the Family Division  
9 Practice Circular.

10

11 46. We will now move on to deal with directions that will flow from this judgment.

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13

14 Dated this the 14<sup>th</sup> day of March 2014.

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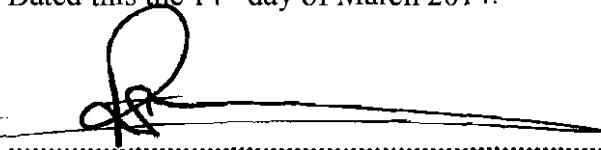
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**The Honourable Mr. Justice Richard Williams**  
**JUDGE OF THE GRAND COURT**

